IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

LETTERS PATENT APPEAL NO. 300 OF 2002
IN
WRIT PETITION NO. 5640 OF 2001

DISTRICT: PUNE

1. The Principal,]
A.I.S.S.M.S. College of Engineering]
Near R.T.O. , Kenedy Road, Pune-411 001.]

2. The Secretary,]
A.I.S.S.M.S. Society, Shivajinagar,]
Pune – 411 005.] .. Appellants (Ori. Petitioners)

Versus

Shri Atul Sitaram Padalkar,]
8-13, Sakal Nagar, Baner Road, Pune-411 007.] .. Respondent (Ori. Respondent)

ALONGWITH

LETTERS PATENT APPEAL NO. 301 OF 2002
IN
WRIT PETITION NO. 5647 OF 2001

DISTRICT: PUNE

2. The Principal,]
A.I.S.S.M.S. College of Engineering]
Near R.T.O. , Kenedy Road, Pune-411 001.]

3. The Secretary,]
A.I.S.S.M.S. Society, Shivajinagar,]

Pune – 411 005.] .. Appellants (Ori. Petitioners)

Versus

Shri Dr. Pradeep Janardan Awasare,]
residing at 5, Shriniwas, Plot No.35,]
Ideal Colony, Paud Road, Pune – 411 029.] .. Respondent (Ori. Respondent)

ALONGWITH

LETTERS PATENT APPEAL NO. 302 OF 2002
IN
WRIT PETITION NO. 5645 OF 2001

DISTRICT: PUNE

3. The Principal,]
A.I.S.S.M.S. College of Engineering]
Near R.T.O. , Kenedy Road, Pune-411 001.]

4. The Secretary,]
A.I.S.S.M.S. Society, Shivajinagar,]
Pune – 411 005.] .. Appellants (Ori. Petitioners)

Versus

Shri Ashok Rajaram Suryawanshi,]
residing at 14, Avanti Happy Colony,]
Kothrud Lane No.2, Pune - 411 029.] .. Respondent (Ori. Respondent)

ALONGWITH

LETTERS PATENT APPEAL NO. 303 OF 2002
IN
WRIT PETITION NO. 5646 OF 2001

DISTRICT: PUNE

4. The Principal,]
A.I.S.S.M.S. College of Engineering]
Near R.T.O. , Kenedy Road, Pune-411 001.]

5. The Secretary,]
A.I.S.S.M.S. Society, Shivajinagar,]
Pune – 411 005.] .. Appellants (Ori. Petitioners)

Versus

Shri Sanjay Devidasrao Koban,]
residing at C-2/121, Atish Complex,]
Anand Nagar, Sinhgad Road, Pune – 411 051.] .. Respondent (Ori. Respondent)

ALONGWITH

LETTERS PATENT APPEAL NO. 304 OF 2002
IN
WRIT PETITION NO. 5649 OF 2001

DISTRICT: PUNE

5. The Principal,]
A.I.S.S.M.S. College of Engineering]
Near R.T.O. , Kenedy Road, Pune-411 001.]

6. The Secretary,]
A.I.S.S.M.S. Society, Shivajinagar,]
Pune – 411 005.] .. Appellants (Ori. Petitioners)

Versus

Manisha Prasad Dale,]
residing at Quarter No.2, Govt. Poly Staff]
Quarters, Gokhale Road, Shivajinagar,]

Pune - 411 016.] .. Respondent (Ori. Respondent)

Shri C.J. Sawant, Sr. Advocate with Mr. R.M. Sawant for the appellants.

Mr. S.M. Oak for the respondents.

CORAM: F.I. REBELO &
ANOOP V. MOHTA, J.

DATED: 27TH AUGUST, 2004.

COMMON ORAL JUDGMENT :

1. All these Appeals are being disposed of by a common order. The respondents in all these cases were appointed as probationers for a period of two years with the A.I.S.S.M.S. College of Engineering. The further fact is that they were not confirmed and their services were terminated on the last date of their probation period. Aggrieved, the appellants preferred Appeals before the College Tribunal. By a common judgment, the learned Presiding Officer by his order of 22nd October 2001, allowed the appeals and set aside the order of termination against each of the appellants, and directed their reinstatement, with continuity of service. There were some further directions.

The appellants herein, aggrieved by the order, preferred Writ Petition before this Court. By a common order dated 3rd May 2002, the Writ Petitions preferred were dismissed and consequently, the present Letters Patent Appeals. At the stage of admission, interim stay was granted subject to the appellants depositing in the Court, the amount of back wages upto date i.e. as of 20th August 2002. The appellants, in terms of the order, have so deposited the amounts. It is not necessary to advert to facts in detail as they have been set out in the order of the learned College Tribunal, as well as, of the learned Single Judge of this Court. It can only be said that all the respondents were appointed as probationers. In their letters of appointment, they were informed that they were appointed in a clear vacancy on full time basis on probation for a period of two years from the date of joining. They were further informed that their services will be governed by the Maharashtra Universities Act, 1994, Statutes, Code of Conduct, Ordinances and Rules and Regulations laid down by the University of Poona, State Government and the Society from time to time.

2. At the time of hearing of this Appeal, learned counsel has made the following submissions.

(i) That the learned Single Judge failed to appreciate that the respondents were appointed as Lecturers in the appellant No.1 College run by the appellant

No.2 Management on probation for a period of twenty four months and as per the appointment letters, their suitability for continuance in service were assessed and they being found unsuitable for being continued, were terminated simplicitor. The said termination of the service of the respondent No.1 as a probationer is, therefore, within the framework of law as applicable for them.

(ii) The learned Judge ought to have seen and appreciated that Statute 417 of the University of Poona (Statutes) is a complete Code by itself as regards the services of a probationer. It explicitly lays down the manner in which the services of a probationer are to be dealt with, including the manner in which the services of a probationer are to be terminated. The appellants had complied with the requirements of Regulation 417 inasmuch as the Governing Body based on the assessment report of the Principal took the decision to terminate the service.

(iii) The learned Judge failed to appreciate that Statute 420 has no application in the case of a probationer. It can cover cases only of confirmed employees. A conjoint reading of Statute 420(1), 420(4) and 420(5) can only lead to one interpretation viz. that the said Statute would apply only to a confirmed employee and the assessment Report is to be considered when the said employee is to be confirmed, promoted or for crossing the assessment bar. Clauses-(a) and (b) of Statute 420(1) are to be read together with other clauses upto clause (f).

(iv) It is then contended that the Claims Tribunal and the learned Single Judge have given a finding that Statute 417 will not apply in a case where the probationary appointment is for a period of less than two years, but would be inapplicable in a case where the probationary appointment is of two years.

3. It is in this background that we shall have to consider the Appeals in question. It will be, therefore, necessary to consider the Statutes of the University of Poona. These Statutes were earlier framed under the provisions of Section 42 and/or 73 of the Poona University Act, 1974. There is a subsequent Act viz. The Maharashtra Universities Act. The Statutes, however, continue to remain the same. The University has framed Statutes governing the terms and conditions of service of the teachers appointed in the University/Colleges and Institutions conducted by the University/Affiliated Colleges/Constituent Colleges/Recognised Institutions of the University of Poona. Statute 411 provides for definitions. Statute 411(2) provides for the "Appointing Authority". Insofar as Affiliated Colleges/Recognised Institutions the appointing authority is the Management of the College/Recognised Institution or the authority constituted by the Management as per its constitution. A "Competent Authority" has been defined to mean the authority competent to exercise different powers under the Act and Statutes specified therein. Under Statute 411 (5)(b) "Contract" in the case of a teacher,

other than of the University means a contract entered into in writing between the teacher of the Affiliated College/ Recognised Institution and the Chairman/President of the Governing Body/ Managing Committee or person to whom the power is delegated. "Probation" has been defined under under Statute 411(11) to mean an appointment made on trial on specified conditions for a stipulated period to a post for determining one's fitness for eventual substantive appointment to the post. The next relevant Statute, which need to be reproduced is Statute 417, which reads as under:

> *"**Statute 417. Probation.***
>
> *1. The period of probation of the teacher shall in no case be more than 24 months, on a expiry of which he will be deemed to be confirmed unless after assessment of his work by the Committee, his services are terminated by giving him one month's notice or one month's salary in lieu of notice.*
>
> *2. The Principal of the conducted College or the Head of the University Department concerned shall maintain Assessment Reports of the teacher on probation in the proforma prescribed for the purpose by the Vice-Chancellor, for every six months and complete it at the end of each term of the academic year. The Principal of the conducted College or the Head of the University Department under whom the teacher is working shall*

send to the Registrar at least two months before the date of expiry of the period of probation, his assessment report with definite recommendations for confirmation in service or otherwise. In case the teacher appointed on probation for a period of less than 24 months is not to be confirmed at the end of his probationary period or his probationary period is to be extended, a confidential report justifying the decision should be attached and such cases be referred to the Vice-Chancellor for further instructions. The Executive Council shall be the deciding authority in these cases. In the case of teachers of Affiliated Colleges, the Principal will maintain Assessment Reports in a similar manner and forward the recommendations to the Chairman, Governing Body for further instructions. The Governing Body shall be the deciding authority in these cases.

3. The Assessment Report of the Principal of Conducted College/Head of the University Department on probation shall be maintained by the Vice-Chancellor, or the Principal of Affiliated College by the Chairman of the Governing Body and will be placed before the Competent Authority at least two months before th date of expiry of the period of probation with definite recommendations of confirmation in service or extension of probationary period or otherwise.

4. If the University/Governing Body terminates the services of the teacher on probation on the ground of reduction in

work-load or abolition of the post and if he is re-employed by the same College or a College under the same management subsequently within a year, the period spent by a teacher on probation during his first appointment shall be counted towards the total period of probation of 24 months. He shall be eligible for annual increment, condonation of break-in-service and confirmation, subject to his carrying good Assessment Report."

Similarly, Statute 420 reads as under:

"Statute 420. Assessment of Teachers Work :

1. In order to evaluate the work of the teacher, he should prepare an out-line of his academic programme in consultation with the Head of the Department at the beginning of a session and then at the end of the academic year prepare a report of the work done by him which should be submitted to the Head of the University Department/Principal/Head of the Recognised Institution by the end of the year.

In addition, the Assessment Report of the teachers shall be maintained by the Head of the University Department/Principal/Head of the Recognised Institution for the following purposes :

(a) For evaluation of six monthly report during the period of probation.

(b) For confirmation in service.

(c) For Assessment at the time of crossing Assessment Bar in [pay scales].

(d) For consideration at the time of interview for a higher post.

(e) Once every three years for determining whether the teacher continues to take his work seriously.

(f) On other occasions when required for specific purpose.

2. The adverse remarks as well as remarks of appreciation of any outstanding work shall be brought to the notice of the person concerned by Head of the University Department/Principal or Vice-Chancellor/Chairman, Governing Body in the case of Heads of University Departments/Principals with a view to making improvement in the work, by the person concerned, if the report is adverse.

The teacher aggrieved by any adverse remarks may represent to the Competent Authority which shall deal with such representation suitably.

3. <u>The assessment report referred to above shall be made by the persons indicated hereinbelow</u> on the recommendations of the immediate Head under whom the member of the staff is working :

Assessing Authority	*Person to be assessed*
(i) Vice-Chancellor	*Head of the University Department /Principal of the conducted College.*
(ii) Head of the University Department and Principal of conducted College Conducted college.	*The teacher working in the Department*
(iii) Chairman, Governing Body	*Principal of Affiliated College/ Head of Recognized Institution.*
(iv) Principal of Affiliated College/ Head of Recognised Institution.	*Head of the Department in Affiliated College/Recognised Institution.*
(v) Principal/Head of Recognised Institution in consultation with the Heads of the Departments in the Affiliated Colleges / Recognised Institutions respectively.	*The Teacher in the Department of Affiliated College / Recognised Institutions.*

4. The Committee consisting of the following members shall consider the Assessment Report for various purposes laid down in Statute 420(1) and will also recommend the crossing of the Assessment Bar in the case of the teacher.

(a) University Department :

(i) the Vice-Chancellor.
(ii) the Head of the University Department/expert in the subject nominated by the Vice-Chancellor.
(iii) the nominee of the Executive Council.

(b) Conducted College :

(i) the Vice-Chancellor.
(ii) Principal of the College concerned.

(c) Affiliated College/Recognized Institution:
(i) the Chairman, Governing Body or his nominee.
(ii) the Principal of the College concerned/Head of the Recognised Institution.
(iii) the Head of the Department in the subjects, if any, or an expert in the subject nominated by the Chairman/Governing Body.
(iv) two experts in the subject nominated by the Vice-Chancellor.

However, in case where assessment of the Head of the Department/ Principal/Head of the Institution is concerned, in place of the Head of the Department/Principal/Head of Institution, the words "an outside expert nominated by the Competent Authority be substituted.

5. On the recommendation of the Committee referred to above the Executive Council/Governing Body shall permit the teacher to cross the Assessment Bar in the scale prescribed. If the report is adverse, he will not cross the Assessment Bar till the the authorities concerned recommended that he be permitted to cross the Assessment Bar."

The learned Single Judge, on the reading of the Statutes, held that the services of a probationer could only be terminated based on the report of the Committee appointed for assessment of the work. In the instant case, no Assessment Committee was appointed and the services of the teachers were

terminated by the Management without the report of the Assessment Committee. This was held to be in contravention of Statutes 417 and 420 of the Act.

4. The real question, therefore, to be answered in this Appeal is whether Statute 417 alone governs the termination of a probationer as contended on behalf of the appellant or the service of probationer can only be terminated considering the provisions of the Statute 417 read with Statute 420.

5. Statute 417(1), as reproduced earlier, provided that the period of probation of the teacher shall in no case be more than 24 months on the expiry of which, the teacher will be deemed to be confirmed unless after assessment of his work by the Committee, his services are terminated by giving him one month's notice or one months salary in lieu of the notice. The Statutes do not provide specifically for an outer limit of the probationary period. However, considering Statute 417, it will have to be read to mean that it cannot exceed 24 months. It is, therefore, open to a Management to provide for a period of probation which, in their opinion, is sufficient for assessing the suitability of the candidate for confirmation to the post to which such a candidate is appointed. In the instant case, the Management had appointed the respondents herein for a period of two years. The same Statute further requires that the work of the candidates must be assessed by a Committee and it is on this assessment that the services are to be

terminated if not to be confirmed by giving one month's notice or one month's salary in lieu of the notice. From a reading of Statute 417(1), which confers the power to terminate, it is clear that the termination can only be, if the work of the candidate is assessed by a Committee. Statute 417(2) insofar as teachers of an Affiliated College is concerned, provides that the Principal will maintain Assessment Reports in a similar manner as being maintained by the Principal of the Conducting College or the Head of the University Department in the earlier part of the Statute and forward the recommendation to the Chairman of the Governing Body for further instructions. The Governing Body shall be the deciding authority in these cases. All that Statute 417(2) therefore provides is that the Principal will maintain Assessment Reports to the Chairman of the Governing Body and the Governing Body shall be the deciding authority in these cases. Does this mean that it is the Principal alone who has to maintain the Assessment Reports and make recommendations based on which, the Governing Body is entitled to take a decision whether to confirm a candidate or to terminate his service.? Counsel for the appellant would like the Court to hold that this Statute alone provides for all the exigencies, including termination of the service of the probationer. That perhaps could have been accepted, but for the words “After assessment of his work by the Committee” under Statute 417(1). It is not possible to interpret the Statutes by rendering some words as otiose. They would

have to be given their due meaning. Read in the manner the petitioner would like to read Statute 417(1) which provides for assessment of the work by the Committee if services are to be terminated will be rendered otiose. It may be noted that under Statute 417(3), the Assessment Report, insofar as the Principal of the Conducting College/Head of the University Department, has to be maintained by the Vice Chancellor or in the case of Affiliated College by the Chairman of the Governing Body and have to be placed before "the Competent Authority" at least two months before the date of expiry of the period of probation with definite recommendations of confirmation in service or extension of probationary period or otherwise. The procedure, therefore, insofar as Principal of Conducting College/Head of the University Department or Principal of Affiliated College, the assessment is not by the Committee, but by the Competent Authority.

6. With that, we come to Statute 420. Statute 420(1) requires that in order to evaluate the work of a teacher, the teacher should prepare an out-line of his academic progress in consultation with the Head of the Department at the beginning of a session and then, at the end of the academic year, prepare a report of the work done by him, which should be submitted to the Head of University Department/Principal/Head of the Recognised Institution by the end of the year. It thereafter provides that in addition to the Assessment Report of the teacher shall be maintained by the Head of the University Department/Principal/Head of

Recognised Institution for the following purposes.

(a) For evaluation of six months report with the period of probation.

(b) For confirmation of service.

In Statute 420(1) in the first part there is no reference to an Affiliated College. The reference is to a Principal in general and thereafter to Head of Recognised Institution. However, under Statute 420(3) the Assessing Authority in the case of the teacher of an Affiliated College is the Principal in consultation with the Heads of the Departments in the Affiliated Colleges. In other words, assessment report is to be maintained by the Principal as the assessing authority, insofar as the teacher is concerned.

7. Statute 420(4) thereafter provides for the constitution of the Committee to consider the assessment report. In case of a teacher in an Affiliated College, the Committee consisting of the members are:

(i) The Chairman of the Governing Body or his nominee.

(ii) The Principal of the College concerned/Head of Recognised Institution.

(iii) Head of the Department in the subject, if any, or an expert in the subject, nominated by the Chairman/Governing Body.

(iv) Two experts on the subject nominated by the Vice Chancellor.

It is this Committee which has to consider the Assessment Report for the various purposes laid down in Statute 420(1). As noted earlier, insofar as the probationer is concerned, it is for the purpose of evaluation of six monthly report during the period of probation and for confirmation in service.

8. Learned counsel for the appellants has tried to submit that Statute 420 only applies to permanent teachers for the purpose of allowing a teacher to cross the assessment bar in the scale prescribed and of the like and does not apply to a probationer. It is not possible to accept such a contention in the teeth of the language used in Statute 420. Again, if the construction sought to be given on behalf of the appellants is to be accepted, the provisions of Statute 420(1) (a) & (b) again will have to be rendered otiose. On a reading of Statute 420, it is apparent that for confirmation of probationer, the Assessment Report of the Committee is required. All that Statute 420(3) sets out is that the Assessment Report shall be made by the Principal. The Assessment Report made by the Principal will be considered by the Committee in terms of Statute 420(4) amongst others for the purpose of Statute 420(1)(a)(b). It is this assessment by the Committee which

must be considered before terminating the service of a probationer under Statute 417(1).

9. Before proceeding further, let us consider aother contention advanced on behalf of the appellants that the Tribunal and the learned Single Judge have come to the view that in case where the period of a probation is less than two years, then Statute 420 would not be available. Firstly, it is not possible to read into Statutes, two methods of confirmation or termination of service of a probationer. As noted earlier, the period of probation is to enable the Management to evaluate whether the candidate is fit enough to be retained. The period of probation can be shortened by the Management if otherwise the Committee comes to the conclusion that the candidate is fit enough to be confirmed. The Management has also not to wait for the period of two years to exercise its powers to terminate on the ground of unsuitability if the Committee comes to the conclusion that the candidate is not suitable to be retained. That exercise can be undergone even much earlier if, based upon the six months Assessment Reports to be maintained under Statute 420(2) as also the evaluation report, the Committee comes to the conclusion that the candidate is not suitable for being retained. Statute must be read harmoniously and to give effect for the object intended. The object intended is that the report of the Principal must be independently assessed by a Committee alongwith the evaluation report prepared

by the teacher and this assessment by Committee must be available to the Appointing Authority to exercise the powers of termination. We are, therefore, unable to agree with the view expressed by the learned Tribunal and as upheld by the learned Single Judge that in cases other than where the probationary period is less than two years, it is Statute 417 alone which will govern the situation.

10. A conjoint reading of Statute 417 and Statute 420, therefore, would mean that there must be two Reports available to the Committee for the purpose of assessment of the performance of the teacher. The first is the Assessment Report prepared by the Principal with the assistance of the Head of the Department or College insofar as Affiliated College is concerned. The other Report is the Report of the candidate himself which is required to be maintained under Statute 420(1). As pointed out earlier, there is no specific reference to Principal of Affiliated College, but the word “Principal” coupled with the words “Head of the Recognised Institution” and coupled with Statute 420(3) must necessarily lead to the conclusion that these are references also to Affiliated Colleges. The Committee, therefore, constituted under Clause 420(4) has thereafter to assess the Assessment Report for the various purposes laid down in Statute 420(1). It is not as if the assessment by the Committee is only for the limited purpose after the candidate is made permanent as was contended on behalf of the appellant, but for all purposes as set out in Statute 420(1). If the provisions of Statute 420(1) are not

to be read in Statute 417 then, as pointed out earlier, two things would happen. Statute 420(4) insofar as Statute 420(1) (a) and (b) would be rendered otiose and not only that, no object would have been achieved in calling on the teacher to maintain an evaluation report in terms of Statute 420 if that be only for the purpose of getting an increment and/or subsequent promotion. We are, therefore, of the view that both Statute 417 and 420 must be read together. So read, it would mean – (a) that there has to be an Assessment Report by the Principal in consultation with the Head of the Department; (b) there has to be self-evaluation by the candidate; (c) these reports must be considered by the committee as constituted under Statute 420(4) which, apart from the persons in Management of the Institution or Head of the Institution, also include two experts on the subject, who will be independent persons who will be in a position to give their opinion as to the suitability of the candidate to be maintained. The entire object and aim is that the Governing Body of the Society has a report of a Higher Committee to enable it to consider the case whether to confirm or to terminate a candidate. If Statute 417 is to be construed in the manner, which the appellants seek that we should construe, then the entire object of an impartial assessment will be defeated. The entire object and purpose of Statute 417 and Statute 420 is to have an objective opinion so that the Governing Body decides the suitability of the candidate. In the instant case, there is a finding of fact recorded and which is not disputed that there was no Assessment Committee constituted in terms of Statute

420(4) before the services of the teachers came to be terminated.

11. Any termination contrary to the Statutes to which the appellants are bound to comply with, considering the provisions of the Act would be illegal. The very fact that these are Statutes governing the condition of service, read with the contract of employment, must result in holding that an Affiliated College in terms of the contract of employment must follow the University Statutes. In the instant case, the Affiliated College has failed to follow the provisions of the Statute which they were bound to comply with in terms of the letter of appointment itself which we have noted earlier. We, therefore, do not find any infirmity in the ultimate conclusion arrived at both, by the learned College Tribunal and/or, for that matter, the learned Single Judge.

12. At the hearing of these Appeals, on behalf of the appellants we were informed that except for Shri Sanjay Devidasrao Koban, the respondent in LPA No. 303 of 2002, all the other are employed in Affiliated Colleges. On behalf of the respondents, their learned counsel points out that most of these appointments are temporary and that except for Dr. Pradeep Janardan Awasare, the other respondents would like to be in the employment of the appellants. We have only noted the arguments. It is possible that on account of subsequent events, a relief which is initially sought may become infructuous. In the instant case, from the

five respondents one yet has to be employed. Another respondent in LPA No. 301 of 2002 is not seeking reinstatement. Three others are in employment, but are seeking reinstatement. The mere fact that during the pendency of the Appeals the teachers have got employment by itself does not mean that their right to be reinstated is defeated. That is only for the purpose of enabling them to tide over the period during the time when the matters are pending in the Court. At the highest, that will sound insofar as back wages are concerned. Considering the above, we find that there is no merit in these Appeals and accordingly, the Appeals will have to be dismissed.

13. All the respondents, except the respondent in LPA No.301 of 2002 would be entitled to be reinstated with full back wages. During the period when the respondents were employed and received wages, that will be set off against the amount they will be entitled to on the basis of reinstatement. The respondents to file Affidavits with the appellants, of the amounts they have received during the period they were out of employment within three weeks from today.

14. Learned counsel for the appellants seeks stay of this order. Considering the facts and circumstances, all that we can say is that if the appellants do not reinstate the respondents within four weeks from today, the respondents would be entitled to take such steps in law, which may be available to

them for enforcing this order in their favour.

15. The Letters Patent Appeals are accordingly disposed of.

16. Certified copy expedited.

[F.I. REBELLO, J.]

[ANOOP V. MOHTA, J.]